

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3192 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MOHMAD @ TARZON SIRAJBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 24th December, 1998 made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'dangerous person' and his activities are found to be prejudicial to the maintenance of public order. Two offences punishable under Chapter XVII of the Indian Penal Code are registered against the petitioner and are pending investigation. Besides, two witnesses, whose identity has been withheld, have given statements in respect of the incidents that occurred on 13th December, 1998 and 11th December, 1998 respectively. In both the said incidents, the petitioner is stated to have dragged the witness to a public place and beaten him. It is also alleged that the crowd of people had gathered and the petitioner had threatened the people gathered there. As a result, the people had to run helter skelter for their safety, and thus, terror and feeling of insecurity were created.

4. The order of detention is challenged on the grounds : (a) the detaining authority has not considered the possibility of preventing the petitioner from his carrying on anti-social activities by resorting the less drastic measure; (b) the detaining authority has relied upon the statements made by the witnesses without verifying the credibility of the witnesses and the correctness of the statements made by them; (c) the alleged activities of the petitioner may at the most be a problem of law and order and has no potentiality of committing breach of public order.

5. The petition is contested by the learned AGP Ms. Punani. She has relied upon the affidavit made by the detaining authority, in reply to the petition. Upon perusal of the grounds of detention, it is manifest that the detaining authority was alive to the other remedies available to him. It is categorically stated that the petitioner could have been prosecuted under the Bombay Police Act by ordering externment but that should not be sufficient to prevent him from carrying on his anti-social activities. The statements of the witnesses have been recorded on 23rd December, 1998 by the concerned Police Inspector. The said witness were summoned before the detaining authority on 24th December, 1998. It is true that the detaining authority in the grounds of detention has not expressly stated that he had examined the credibility of the witnesses and the statements made by them. However, in my view the

challenge is not tenable. The detaining authority in his affidavit has categorically stated that after carefully examining the material placed before him and on personally verifying the correctness and genuineness of the statements of the witnesses in the unregistered offences, he had found the apprehension voiced by the witnesses was proper and quite reasonable. Hence, it appears that the detaining authority has actively applied his mind on the issue of credibility of the witnesses and the statements made by them. Mr. Dave, the learned advocate appearing for the petitioner has placed reliance upon the judgment of this Court in the matter of Nareshbhai Alias Manoj Naranbhai Kanojiya v. Commissioner of Police [Special Civil Application No. 585 of 1999 : Decided on 22nd July, 1999]. In the said matter, the grounds of detention did not disclose that the detaining authority had examined the credibility of the witnesses and the genuineness of the statements made by them. In the said matter, the detaining authority had not filed an affidavit either. Since, in the present case, the detaining authority has made a statement on oath before this Court, as aforesaid, the judgment in the matter of Naresh alias Manoj Naranbhai Kanojia [Supra] shall not apply. The Bench of this Court [Coram : Mr. Justice M.R. Calla] in the matter of Mohammad Sarif v. Commissioner of Police [1997 (1) GLH 1017] has held that, 'the subjective satisfaction in respect of the incidents in question shall be manifest from the grounds of detention, more particularly when there is no contemporaneous evidence taken note of and considered by the detaining authority or in any case, where it is alleged that the order had been passed without application of mind. It must be shown before the Court by way of filing affidavit or otherwise on the basis of some contemporaneous evidence.' As observed hereinabove, though in the present case, the subjective satisfaction has not been recorded in so many words in the grounds of detention, the fact remains that the witnesses were summoned before the detaining authority and they were personally examined by the detaining authority. Moreover, the detaining authority has made an affidavit and has stated that he had examined the credibility of the witnesses and the genuineness of the statements made by them. The Court must hold that the order of detention has been made after proper application of mind in this respect also. The offences registered against the petitioner relates to a problem of law and order, however, the incidents narrated by the witness referred to hereinabove do disclose the petitioner's anti-social activities which are prejudicial to the maintenance of public order. On similar facts, the Hon'ble Supreme

Court, in the matter of Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat & Ors., [JT 1999 (4) SC 455] has held that, 'such activities would be prejudicial to the public order'. It, therefore, cannot be held that the petitioner's activities are mere breach of law and order but it certainly has an adverse effect on the public order also.

Petition is dismissed. Rule is discharged.

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Prakash\*